IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2004

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THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

W.P.No.3062 of 1997

P.A.G.Hassain Moulana .... Petitioner

-Vs-

1. The Union of India
rep. by the Secretary,
Government of India,
Ministry of Welfare,
New Delhi - 110 001.

2. The Government of Tamilnadu
rep. by the Secretary of
Commercial Taxes and Religious
Endowments Department,
Fort St. George, Chennai - 600 009.

3. The Secretary,
Tamilnadu Wakf Board,
No.3, Santhome High Road,
Chennai - 600 004. .... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying for the issuance of writ of declaration declaring that the Wakf Act 43
of 1995 is unconstitutional as it is ultra-vires of the Constitution so far
the Application of its Section 14(1) (b) (iv) and 14(1)(c) and 14(1)(d) of the
said Act 43 of 1995.

For Petitioner : Mr. J.K.Abdul for
Mr.S.B.Fazluddin

For Respondents : Mr. M.T.Arunan, ACGSC - R1
Mr. P.S.Jayakumar, G.A.-R 2
Mr.M.Munir Sheriff - R3

:O R D E R

The petitioner challenges Section 14(1)(b)(iv), 14(1)(c) and

14(1)(d) of the Wakf Act as unconstitutional. These provisions reads as follows:
Section 14(1)(b)(iv): mutawallis of the wakfs having an annual income of rupees one lakh and above;
Section 14(1)(c) : one and not more than two members to be nominated by the State Government representing eminent Muslim organisations; and
Section 14(1)(d): one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology.

2. According to the learned counsel appearing for the petitioner Section 14(1)(b)(iv) of the Wakf Act is unconstitutional because a mere annual income of rupees one lakh and above cannot be a reasonable qualification to consider the mutawalli, who could be a member of the Board for a State. According to him, the qualification such as education in degree and post graduation alone be a consideration.

3. I am not able to appreciate the said contention. As per Section 3(r) of the Wakf Act,
'Wakf' means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-
i) a wakf by user bur such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
ii) grants, including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable and 'wakf' means any person making such dedication.

4. It is therefore, clear that the object of the very registration itself is with reference to the value of movable or immovable property dedicated for pious, religious and charitable purposes, which is nothing to do with educational qualification. In that view of the matter, prescribing a qualification based on annual income of rupees one lakh and above cannot be an arbitrary and irrational consideration while selecting mutawalli, who could be a member of the Board.

5. Secondly, with regard to Section 14(1)(c) and (d) of the Wakf Act, according to the learned counsel appearing for the petitioner, nothing is defined that who could be considered as a representative of eminent Muslim Organisation. Under Section 14(1)(c) and (d) of the Wakf Act, it is clear that the power to select a representative from eminent Muslim Organisation was given to the State Government. Therefore, it is for the subjective satisfaction of the State Government to consider the representative from the eminent Muslim Organisation after
P.D.DINAKARAN,J

taking into relevant consideration that prevails in a particular State. Therefore, again I do not find any unreasonableness in Section 14 (1) (c) and (d) of the Wakf Act.

6. Hence, I do not find any substance in the contention raised by the petitioner in this regard. The contentions made on behalf of the petitioner is nothing but perverse in nature and finding no merit in this writ petition, the same is dismissed with cost of Rs.5,000/-.

Index:Yes
Internet:Yes

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To

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